

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA - NORTHERN DIVISION**

BETTY ANN BURKS, <u>et al.</u> ,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	No. 2:06-CV-1081-MEF
	:	
EQUITY GROUP - EUFAULA	:	
DIVISION, LLC,	:	
	:	
Defendant.	:	

**JOINT MOTION TO ORDER MEDIATION AND
ALTER DEADLINES PENDING MEDIATION.**

Plaintiffs and Defendant, Equity Group - Eufaula Division, LLC, jointly move the Court to Order Mediation and briefly postpone the pretrial deadlines to allow for meaningful mediation and state as follows:

1. Plaintiffs, current and former employees of Equity's poultry processing plant, instituted this action under the Fair Labor Standards Act ("FLSA") seeking, on behalf of themselves and all others similarly situated, to recover wages and overtime for allegedly uncompensated time spent donning and doffing sanitary and protective clothing worn at defendant's poultry processing plant, as well as for related cleaning, waiting and walking time.

2. The parties agree that, at this juncture in the litigation, they are at a position in which mediation or some form of settlement conference would be beneficial.

3. This matter is currently in the Court's trial pool for the period beginning September 29, 2008. The parties recognize that the Court has a firm schedule and do not wish to cause inconvenience to the Court and its busy schedule.

4. The parties request that the Court allow some flexibility within its scheduled trial pool to facilitate the parties' efforts to conduct a meaningful mediation, such as extending the pre-trial deadlines and/or pushing this matter to the end the trial pool.

5. The parties have agreed to engage Hunter R. Hughes, III, Esquire, of Rogers & Hardin LLP, as the mediator in this matter. As noted in biography, attached as Exhibit A, Mr. Hughes has experience in successfully resolving employment-related class actions. Due to his own litigation schedule, however, the first date that Mr. Hughes is available is September 16, 2008, and the parties have agreed to commit to that date for the mediation.

6. The parties are optimistic that they will be able to resolve this matter through mediation, especially with the involvement of Mr. Hughes.

7. Under the current case schedule, the following pretrial deadlines will require a significant amount of time and resources before Mr. Hughes' first available date:¹

<u>DATE</u>	<u>EVENT</u>
August 20, 2008	Exchange of potential trial witnesses
August 20, 2008	Exchange of trial exhibits
August 20, 2008	Designation of deposition testimony to be used at trial
August 25, 2008	Joint Pretrial Report to be filed

¹On August 7, 2008, the Court issued its decision on Equity's Motion for Summary Judgment, granting the motion in part and denying the motion in part. [See Dkt. No. 109.] On August 1, 2008, Equity filed a Motion to Sever Claims and Decertify Class, the briefing of which is currently set to be complete by September 3, 2008. [See Dkt. No. 110.]

August 25, 2008	Plaintiffs' Response to Motion to Decertify Class and Sever Claims
August 27, 2008	Adverse/Responsive designations of deposition testimony
August 28, 2008	Pretrial Conference
August 29, 2008	Rebuttal designations of deposition testimony
September 3, 2008	Defendant's Reply in Support of Motion to Decertify Class and Sever Claims
September 15, 2008	Objections to proposed trial exhibits and deposition designations
September 15, 2008	Proposed jury Voir Dire
September 15, 2008	Motions in Limine
September 15, 2008	Proposed Jury Instructions

8. The parties agree that, given this significant amount of pretrial preparation, a short postponement of the pretrial deadlines, as set out in Paragraph 7 above, to a date no earlier than September 19, 2008, would allow the parties to focus their efforts on the mediation process and potential resolution of this case and avoid the substantial expenditures of time and money that could otherwise be directed towards resolution.

9. Indeed, in connection with the Discovery process, the parties have exchanged over 20,000 pages of documents as well as extensive information in electronic format. This volume of information alone (and potential use in exhibits at trial) will require significant resources.

10. As such, the parties request that the Court postpone the pretrial deadlines and/or push this matter to the end the trial pool to allow them ample time to resolve a schedule with a

mediator, prepare submissions and conduct the necessary mediation sessions.

WHEREFORE, the parties respectfully request that the Court grant this Joint Motion, refer this matter to mediation and postpone the pretrial deadlines.

/s/ Howard A. Rosenthal

Howard A. Rosenthal

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EXHIBIT "A"

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A substantial portion of Mr. Hughes mediation practice and experience involves multi-party and class action cases. These mediations typically take from 1 to 15 months to resolve and include mediating preliminary issues involving discovery such as the number of depositions, who will be deposed, the extent of statistical data produced and a variety of other class action discovery issues. Thereafter, class mediations involved identifying and agreeing upon terms of any programmatic relief to be established in a consent decree, the type of payment structure to class members, distribution issues and attorneys' fees and individual payment matters.

Mr. Hughes has successfully served as the mediator in numerous employment class actions, including the Publix class action, which was the largest certified employment class action in the country, the Home Depot and Winn Dixie employment class actions as well as the Burlington Northern genetic testing litigation. He also served as the mediator in The Coca-Cola Company class action litigation and recent class actions involving Boeing Aircraft Company.

Types of Cases Mediated

- ▶ Business
- ▶ Discrimination
- ▶ Employment
- ▶ General Mediation
- ▶ Harassment
- ▶ Labor Management
- ▶ Workplace

MEMBER: 2004

Background

Hunter R. Hughes is a Partner in the Atlanta firm of Rogers & Hardin, LLP practicing primarily in the area of employment law. He has successfully served as lead trial counsel in numerous employment and other cases, including nationwide class actions and mass employment litigation. He has been lead counsel in arbitrations as well as numerous proceedings before state and federal agencies. The "National Law Journal" has recognized him as "among the Nation's Best Litigators in Employment [law]."

Education/Training

Mr. Hughes received his B.A. and J.D. degrees from the University of Virginia.

Practicing in Georgia



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EQUITY GROUP-EUFAULA :
DIVISION LLC, :
Defendant. :

:

**ORDER RE: JOINT MOTION TO ORDER MEDIATION
AND ALTER DEADLINES PENDING MEDIATION.**

AND NOW, this _____ day of August, 2008, upon consideration of the Joint Motion to Order Mediation and Alter Deadlines Pending Mediation, it is hereby ORDERED that the Motion is GRANTED. The Pretrial deadlines in this matter are altered as follows:

<u>DATE</u>	<u>EVENT</u>
_____	Exchange of potential trial witnesses
_____	Exchange of trial exhibits
_____	Designation of deposition testimony to be used at trial
_____	Joint Pretrial Report to be filed
_____	Plaintiffs' Response to Motion to Decertify Class and Sever Claims
_____	Adverse/Responsive designations of deposition testimony
_____	Pretrial Conference
_____	Rebuttal designations of deposition testimony
_____	Defendant's Reply in Support of Motion to Decertify Class and Sever Claims

Objections to proposed trial exhibits
and deposition designations

Proposed jury Voir Dire

Motions in Limine

Proposed Jury Instructions

J.

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Plaintiffs,	:	
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	:	
EQUITY GROUP EUFAULA	:	
DIVISION LLC,	:	
	:	
Defendant.	:	

CERTIFICATE OF SERVICE

The undersigned counsel for Equity Group-Eufaula Division LLC hereby certifies that a true and correct copy of the Joint Motion to Order Mediation and Alter Deadlines Pending Mediation in the above-captioned matter was filed electronically with the Clerk of Court on August 11, 2008 using the CM/ECF system, which will send notification of such filing to:

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